Committee on Resources

Testimony

Subcommittee on Energy & Mineral Resources
Thursday, March 20, 1997

TESTIMONY OF PAUL C. JONES
March 20, 1997

INTRODUCTION

I am Paul C. Jones, Executive Director of *the Minerals Exploration Coalition*, an advocate of the multiple use of public lands of the United States. Today I am pleased to testify before your Committee today regarding the recently published Bureau of Land Management regulations related to bonding of exploration and mining activities on the Public Lands.

I have over 35 years experience in the mineral industry in North and South America in all levels of the industry from junior engineer to Chief Executive Officer of publicly held corporations.

The ***Minerals Exploration Coalition,*** located in Golden, Colorado, is an advocate on public policy issues involving access to, and the safe and environmentally responsible use of, public lands of the United States for mineral exploration and development. Our membership, including more than 30 corporations, represents a diverse group of professionals and companies engaged in mineral exploration on public lands.

PRESENTATION

On February 28, 1997 the *Bureau of Land Management (BLM)* published a final rule in the Federal Register (62*FR*9093-9103) concerning a portion of 43*CFR*3809 relating to the surface management of lands subject to the mining law, more particularly to bonding of exploration and mining activities on the public lands. I am deeply concerned about the manner in which the Administration established this rule.

Unfortunately this rule was formulated and published by the *BLM*, effective March 31, 1997, without recent publication of a notice to issue the rule, without a recent public comment period on the proposed rule, and without consideration of events which affect the need or operation of the new rule. *BLM's* notice of Final Rule stated that the notice of proposed rule was published on July 11, 1991 (56*FR*31602) with the period of public comment closing October 9, 1991 - five and one-half years ago.

Why did the *BLM* not issue the final rules in 1991 or early 1992, or even in the early days of the Clinton Administration - not five and one-half years later? What is the urgency which does not allow re-publication of proposed rule, a new public comment period, and the formulation of a final rule in this process - five and one-half years after the period of public comment for the proposed rule was closed.

I suggest, ladies and gentlemen, that many relevant changes have occurred since 1991 which affects, if not makes unnecessary, the recently issued rule. Particularly, numerous changes have occurred in state regulations affecting mineral exploration on public lands which justify, if not mandate, newly formatted proposed rules be issued, a reasonable comment period established, and public input taken and used in the

formulation of the final rule - whatever its content.

On January 6, 1997 Interior Secretary Babbitt sent a letter to the Assistant Secretary, Land & Minerals and the Acting Director, *BLM* requesting they present to the Secretary a plan to modify the hardrock mining surface management regulations (43*CFR*3809) commonly called "3809 Regulations." More recently we have learned that the Secretary has established a Task Force to review and prepare modifications of such regulations.

When we at ***MEC*** saw the January 6, 1997 letter from Secretary Babbitt we assumed, apparently in error, that any such rule changes related to 3809 Regulations would follow the normal procedure of publishing proposed rule changes, taking public comment on those issues, and considering that public comment in formulating the final rule. The propagation of the rule on bonding of mineral related operations gives us considerable cause for alarm about how the Secretary plans to formulate new rules under the 3809 Regulations.

The ***Mineral Exploration Coalition*** publishes an exploration Permitting Directory covering the regulations of 21 states, including all western states where most public land is located. In addition most, if not all, mid-western and eastern states where metal mining occurs are included. The Directory also includes *BLM* and U.S. Forest Service (*FS*) rules governing exploration activities. This directory is updated on an annual basis to incorporate any changes in state or federal regulations which occur in the preceding year. Numerous changes have occurred in the directory in the last six years.

A review of the ***MEC*** Permitting Directory will indicate that all of the 21 states covered require some form of bonding for exploration and/or mining activity on the public land. The requirements for prior permitting, reclamation and bonding in each

state may vary, but most states do cover all acreage disturbed

without regard to ownership, whether it be private, state or federal. Sixteen of the twenty one states require bonding for exploration. Of the states covered in the ***MEC*** manual, only Alaska does not require permitting and bonding of exploration activities on federal lands.

Numerous revisions have been made to our directory in the past few years as the individual states have modified their reclamation regulations. A brief review indicate that modifications have been made to the regulations in almost all states since 1991. In particular, the states of Arizona, New Mexico have instituted the regulation of exploration and mining activities since the *BLM* ask for comments on their most recent proposed rules in 1991. In addition the states of Colorado, Minnesota, Montana, and Nevada have made major changes in their legislation and/or regulations governing exploration permitting and reclamation since 1991. Just two weeks ago the ***MEC*** office received a completely revised set of regulations from Montana to incorporate into the 1997 edition of our directory.

In the case of Colorado significant changes were made to the Colorado Mined Land Reclamation Act in 1993 following the Summitville Mine incident with new rules under the revised act being propagated in 1994. I was personally deeply involved in both the legislative and rule making process in Colorado and will discuss that process in more detail shortly.

A review of the federal permitting section of the ***MEC*** Permitting Directory indicates changes were made to both the *BLM* and *FS* sections since October, 1991. Of particular note was the reference on page 4-8 related

to *BLM* Manual Handbook H-3042-1 dated February 2, 1992 and entitled *Solid Minerals Reclamation Handbook,* issued obviously after the date of closure of public comment on the 1991 *BLM* draft rules. The contents of this handbook appear to be incorporated into the release language of the bonding rule, again without public comment.

In the case of the Colorado Regulations major changes in the underlying legislation and subsequent regulation were made in 1993 and 1994 as a result of the Summitville Mine abandonment by Galactic Resources Ltd. I was Chairman of the *Colorado Mining Association (CMA)* in 1992-93 and Chairman of the *CMA Summitville Task Force* from 1993 to the present. As such I participated in the process of revising our state law (93-247) to correct deficiencies in the law and subsequent change in regulations under that law in 1993-94 and to a lessor extent in 1995.

Major changes of the Colorado Mined Land Reclamation Act were made in 1993. These changes specifically included modification of the previous law which provided minimal requirements for small operations, elimination of statewide permitting of exploration to a system where each project must be separately permitted under a confidential "Notice of Intent to Explore" system, introduction of

a "Designated Mining Operation" classification covering operations which use hazardous chemicals or have the "potential" to produce acid forming chemicals or heavy metal concentrations in runoff water and, most importantly to this discussion, significantly increased bonding requirements on all operations within the state. Under current regulations, all operations, whether exploration, development, or mining, must be adequately bonded.

Colorado regulations apply to all lands within the state, whether private or government owned (including federal lands). Certain, but not all, portions of the permit application must be approved by a Professional Engineer. Bonds must be sufficient to allow the State to conduct the reclamation in the event of abandonment by the operator. The form of the bond must be fungible and in the name of the State of Colorado.

Exploration and/or operating bonds under the Colorado Mined Land Reclamation statute will vary dependent upon the nature of disturbance, pre-activity condition of disturbed surface, and other relevant conditions. Bonds posted range from $500 per acre to over $10,000 per acre on limited areas.

As you can see from my description of the Colorado regulations, our state adequately regulates both exploration and mining operations on both public and private lands in the state. Similar regulations apply in most other Western states.

I do not wish to devote time at this hearing to critique specific items of the new rules which are considered by many as objectionable. However, I will mention several items which deserve meaningful consideration:

the new rules do not outline specific time frames for the procedures for releasing the bond established for reclamation. All states with which I am familiar establish specific procedures for partial and final release of bonds;

the requirement for a professional engineer appears overkill on minor exploration plans and operating plans for mining operations of minor impact;

no criteria is established for a maximum review time allowed *BLM* for plan approvals, in fact the Q & A

sheet states delays are inevitable;

the elimination of the small miner (5 acre) exemption may be overly restrictive, both from the standpoint of impact on small operations, and from the impact on *BLM* staffing required to administer the program; and

no method is established for providing confidential treatment of exploration data or information, a requirement which is of major importance to the exploration community.

MEC is also concerned about the negative impact this new rule can have on exploration by individual explorationist who are an integral part the U. S. exploration scene. The self-initiation process provides a very high percentage of the new mineral discoveries in the United States. We believe the rule in its present form will cause much confusion on what will consist of "casual" use of public lands for exploration. Will driving a pickup or jeep along designated roads to inspect an area be classified as "casual use", or will it require complying with "notice level" requirements and posting of a bond prior to commencement of the activity? Will a geologist be required to meet "notice level" requirements and post a bond to perform field mapping, take "chip samples", or conduct geophysical surveys on public lands? Will the staking of unpatented mining claims require advance "notice level" filings. If any of these issues are the case, we believe such a requirement will be overly restrictive, costly, and unduly time consuming for the nature of the impact such an activity will have on the public lands. These items are not adequately addressed in the new rules.

Similar concerns may be expressed for the legitimate "small miner" who operates in a environmentally sensitive manner, yet does not have the financial resources to engage a professional engineer to compile a "notice level" or more formal "plan of operation" for a small, under five (5) acre mining operation.

CONCLUSION

The ***Minerals Exploration Coalition*** believes the new rule regarding bonding for mineral activity on the public lands deserve new public comment and reconsideration before implementation. The changes in applicable state regulations related to mineral exploration and mining activity have changed considerably since public comments were taken on proposed rule in 1991. These changes, without exception, have strengthened the requirements for mineral activity, including that on public lands. Adequate regulation exist in most states where exploration occurs on public land, thus the need to rush this new rule into effect is unnecessary.

MEC is also concerned that the method of implementation of the rule on bonding indicates a disregard on the part of the Department of Interior for the normal rule-making process. This gives us much concern regarding the upcoming activities of *BLM* in revising 3809 Regulations.

In conclusion, I would like to clearly state that ***MEC*** is not opposed to the posting of a bond for exploration activity if that bond is in a reasonable amount and is fairly administered. We already post such bonds for almost all our major exploration activities in the states in which we work. However, ***MEC*** believes adequate change has been demonstrated in both the need for and circumstances about the *BLM* rule on bonding to justify additional rule-making on this issue prior to a final rule being implemented. We strongly urge the *BLM* to withdraw this rule and re-institute normal rule-making procedures in this matter.

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